

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

REGINALD HIGHTOWER,	)	
	)	
Plaintiff,	)	
	)	No. 06 C 2937
vs.	)	
	)	
CITY OF CHICAGO,	)	
CHICAGO POLICE OFFICER	)	Judge James B. Moran
JOHN MURPHY, CHICAGO POLICE	)	
OFFICER DANIEL GALLAGHER and	)	
CHICAGO POLICE OFFICER	)	
P.C. DEVINE	)	JURY DEMANDED
	)	
Defendants.	)	

**DEFENDANTS' MOTION TO DISMISS  
COUNTS II, III, IV AND V**

Defendants, John Murphy, Daniel Gallagher and Peter Devine, by one of their attorneys, Margaret A. Carey, Senior Counsel for the City of Chicago, move pursuant to rule 12(b)(6) of the Federal Rules of Civil Procedure to dismiss Counts II, III, IV and V of Plaintiff's Amended Complaint. In support of that motion Defendants state the following:

1. On May 25, 2006, Plaintiff filed his complaint against the City of Chicago and unknown officers. See doc. no. 1.
2. On September 29, 2006, Plaintiff moved for leave to file his amended complaint. See doc. no. 11. That motion was granted on October 6, 2006. See doc. no. 14.
3. Defendants now move to dismiss Counts II, III, IV and V because they are barred by the statute of limitations.
4. Plaintiff alleges that on June 5, 2005, he was arrested by the Defendants. See doc. no. 13 at ¶9. Plaintiff further claims that he was mistreated by the Defendants, charged with a

crime, prosecuted and his criminal case was dismissed on July 7, 2005. Id. at ¶¶10-20.

5. In his amended complaint, Plaintiff makes four state law claims: false arrest (count I); malicious prosecution (count III); battery (count IV); and intentional infliction of emotional distress (count V).

6. Under the Tort Immunity Act, Plaintiff has one year from the time of injury to bring a claim against the City of Chicago or its employees. 745 ILCS § 10/8-101(a). Consequently, Plaintiff had until June 5, 2006 to bring his state law claims for false arrest, battery and intentional infliction of emotional distress. Plaintiff waited until September 29, 2006 to bring these claims. Therefore, they are barred by the statute of limitations.

7. Similarly, Plaintiff had until July 7, 2006<sup>1</sup> to bring any claim for malicious prosecution. Therefore, Plaintiff's Count III is also time barred.

WHEREFORE, Defendants respectfully request that their motion to dismiss be granted, that Counts II, III, IV and V be dismissed and for any other relief this Honorable Court deems necessary and proper.

Respectfully submitted,

/s/ Margaret A. Carey  
MARGARET A. CAREY  
Senior Counsel

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<sup>1</sup> Defendants assume for the purposes of this motion only that the determination entered by the state court on plaintiff's criminal charges were indicative of Plaintiff's innocence.

**CERTIFICATE OF SERVICE**

I hereby certify that I have caused true and correct copies of the above and foregoing  
**DEFENDANTS' MOTION TO DISMISS COUNTS II, III, IV AND V OF PLAINTIFF'S**  
**AMENDED COMPLAINT**, to be electronic mailed to the person named in the foregoing  
Notice at the address therein shown, on this 6<sup>th</sup> day of December, 2006.

/s/ Margaret A. Carey  
MARGARET A. CAREY  
Senior Counsel